

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
) No. 1:09-cr-10170
vs.)
)
)
ANDREA GOODE-JAMES,)
)
)
Defendant.)

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

SENTENCING HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, MA 02210
December 7, 2009
3:15 p.m.

Brenda K. Hancock, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way
Boston, MA 02210
(617) 439-3214

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2 APPEARANCES:

3 UNITED STATES ATTORNEY'S OFFICE
4 By: Mark J. Balthazard, AUSA
5 1 Courthouse Way, Suite 9200
6 Boston, MA 02210
7 On behalf of the United States of America.

8 RANKIN & SULTAN
9 By: James L. Sultan, Esq.
10 151 Merrimac Street
11 Second Floor
12 Boston, MA 02114
13 On behalf of the Defendant.

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15 UNITED STATES PROBATION: USPO Jennifer Sinclair
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1 (The following proceedings were held in open court
2 before the Honorable Douglas P. Woodlock, United States
3 District Judge, United States District Court, District of
4 Massachusetts, at the John J. Moakley United States Courthouse,
5 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on
6 December 7, 2009):

7 THE CLERK: All rise.

8 (The Honorable Court entered the courtroom at 3:15 p.m.)

9 THE CLERK: This Honorable Court is now in session.
10 You may be seated.

11 This is the matter of United States versus Andrea
12 Goode-James. Criminal Action 09-10170.

13 THE COURT: Well, I have received the Presentence
14 Report, obviously, and the defendant's Sentencing Memorandum
15 with the numerous exhibits and the government's Sentencing
16 Memorandum and then the government's Motion for
17 Forfeiture/Money Judgment.

18 Now, are there any other written materials I should
19 have?

20 MR. BALTHAZARD: The government also filed, your
21 Honor, the motion under 3E1.1(b), the third point.

22 THE COURT: Yes, I have that.

23 MR. SULTAN: Your Honor, there was just one exhibit
24 that was filed separately.

25 THE COURT: Number 24.

1 MR. SULTAN: 24, and also 26 was filed separately
2 simply because it was a set of DVDs.

3 THE COURT: Right.

4 MR. SULTAN: That's all, your Honor.

5 MR. BALTHAZARD: Your Honor, if I may, I just wanted
6 to advise the Court for the record that there are some victims
7 present in the courtroom, Lionel and Verona Bembridge and two
8 attorneys representing CATIC, the title insurance company,
9 Kevin O'Malley and Amanda Zuretti. They have advised me that
10 they are not interested in addressing the Court, but obviously
11 if there are any questions they would be happy to answer them.

12 THE COURT: All right. Thank you.

13 Well, as I read the Presentence Report, the only issue
14 that seems to require my resolution is an objection to the
15 enhancement for abuse of trust, and I guess, Mr. Sultan --

16 Or maybe I should ask you, Mr. Balthazard, what is it
17 that provides some measure of discretion on the part of the
18 attorney for the title insurance company that we can call it an
19 abuse of trust for there to be some deviation?

20 MR. BALTHAZARD: As an agent for the title insurance
21 company or as attorney for the lenders?

22 THE COURT: First, agent of the title insurance
23 company.

24 MR. BALTHAZARD: She is provided with discretion to
25 issue commitments that bind the title insurance company.

1 Obviously, she is supposed to do it in a certain way. She's
2 only supposed to do it in connection with closings where she
3 has used her legal judgment to determine that, in fact, there
4 are not impediments to the title that would --

5 THE COURT: Is that a legal judgment, that is to say,
6 title examination?

7 MR. BALTHAZARD: I am not sure whether actually going
8 out and doing the title search is necessarily a legal task or
9 required to be done by an attorney, but the judgment in
10 reviewing that as to whether or not there is a lien on the
11 title or a problem with the title I would suggest is a legal
12 judgment that has to be made. Even if it's not a legal
13 judgment, it's still a judgment that she has to exercise
14 independently of what the title insurance company is doing.
15 She has to make that determination and then issue a commitment
16 and bind the title insurance company.

17 THE COURT: Well, what kind of review does she receive
18 from the title insurance company? She receives instructions
19 from the title insurance company. What kind of review does she
20 receive from the title insurance company?

21 MR. BALTHAZARD: I don't know the answer to that as to
22 what they actually review, but they are not located in her
23 office.

24 THE COURT: Maybe one of the victim representatives
25 can answer the question.

1 MS. ZURETTI: I can, your Honor.

2 THE COURT: If you could identify yourself for the
3 record, please.

4 MS. ZURETTI: For the record, my name is Amanda
5 Zuretti. I'm a title insurance underwriter for CATIC. My last
6 name is spelled Z, as in "Zebra," -U-R-E-T-T-I.

7 On April 13th of 2009, Judge Tauro in a civil action
8 in this court, which is captioned Real Estate Bar Association
9 of Massachusetts --

10 THE COURT: I am familiar with the litigation. I am
11 more specifically concerned with what this defendant did in
12 connection with title insurance.

13 MS. ZURETTI: I understand, your Honor. It is not the
14 title insurance company that issues instructions to its title
15 agent as to how to conduct a closing and how to clear record
16 title. The closing attorney receives instructions from the
17 lender, which, in short, require him or her to make sure that
18 the mortgage lien that is going to be recorded is going to be
19 in a contracted-for priority position and that it will be
20 properly perfected in that it's a secure transaction, and that
21 our recording statutes require that the mortgage be properly
22 recorded in the Registry of Deeds typically in first position.

23 It is, therefore, up to the title insurance agent, who
24 is typically the closing attorney who represents the lender, to
25 review an abstract of title, to clear any clouds or

1 encumbrances from that title, to handle the lender's documents
2 and the borrower's funds ethically and appropriately in
3 accordance with Massachusetts IOLTA rules and the lender's
4 instructions, to deliver the documentation to the Registry of
5 Deeds and to disburse the funds ethically and accurately in
6 accordance with IOLTA rules and the loan closing instructions.

7 After that time, it is the agent's responsibility, the
8 closing attorney, to issue a policy of title insurance that
9 conforms with what it is called a policy commitment. In other
10 words, that is to issue an insurance document that provides
11 assurance to the lender that the mortgage instrument is
12 properly recorded in the public record and that the loan funds
13 are disbursed in accordance with the terms of the loan. When
14 that is not done there is a loss suffered first to the
15 borrower, who is offering his or her home as collateral to
16 secure the repayment of loan funds, secondly to the lender, who
17 is offering the use of its money over time in return for
18 payment in the form of interest and, thirdly, to the title
19 insurance company that relies upon its agents to act ethically
20 and in terms of high standards of practice to make sure that
21 those requirements are met.

22 THE COURT: In this connection it is necessary for
23 someone to be an attorney; is that right?

24 MS. ZURETTI: In this state currently it is required
25 to be an attorney, and CATIC, because its corporate philosophy

1 is to support and promote the role of the attorney, you must be
2 an attorney in order to be a CATIC agent.

3 THE COURT: Now, you have touched on something that I
4 wanted to explore a bit, and perhaps I could ask Mr. Balthazard
5 this, but I may ask for some additional information in just a
6 moment. I want to understand how the losses are calculated for
7 the several victims in this case, how they lost funds.

8 MR. BALTHAZARD: Is the Court referring to the
9 breakdown?

10 THE COURT: Yes, yes. I guess I just want to
11 understand are the victims severally adverse to each other now,
12 too? I gather from the Bembridges' representations that they
13 are, that they face difficulties with the lender.

14 MR. BALTHAZARD: Yes, your Honor. We started from a
15 position of how much money was loaned and how much money did
16 Ms. Goode-James take from those proceeds.

17 THE COURT: Right.

18 MR. BALTHAZARD: And we reduced it for the specific
19 amounts from those loans that went to the borrowers, and in
20 this case both the Bembridges and Mr. Wood received a certain
21 portion. We deducted those out to the extent that they had
22 been provided with some of the funds, it was not a large
23 amount, and it left a total of about \$1,141,000 that had been
24 loaned and which had been taken by Ms. Goode-James. And then
25 we looked to the amounts that CATIC had paid out on the claims

1 that were submitted, because with respect to each property,
2 when this all shook out, there were two lenders, two competing
3 mortgages on each of these properties, and there was a -- there
4 was one lender that had a title insurance policy with CATIC or
5 at least had a commitment that CATIC was going to honor, and it
6 was I think the second lender, if you will, that had this
7 policy with CATIC.

8 The way CATIC dealt with these, CATIC's obligation was
9 to put the lender, its insured, in the same position as it
10 would have been had there not been this cloud on the title, and
11 the cloud being in each of these cases that it was not in the
12 first lien position, there was a pre-existing mortgage that Ms.
13 Goode-James had failed to pay off and clear the title.

14 And what CATIC would do is, it would with each of the
15 properties, it would approach either its insured or the prior
16 mortgage holder and see which it could negotiate a settlement
17 with. If it could negotiate a settlement with its insured then
18 it did so, it made a certain payment to it. I believe with
19 respect to one of the properties it reached an agreement with
20 the prior mortgage holder, in which case by reaching that
21 agreement, having that mortgage discharged, it was putting its
22 insured in the same position which it had bargained for, which
23 was that it was the first lienholder on the properties.

24 We worked from the understanding that these were
25 legitimate loans, that they were fairly negotiated and freely

1 given by the lender, that there was no fraud in connection with
2 obtaining these loans. That was the understanding that we
3 worked from in trying to determine where the restitution should
4 be paid to the extent that there is any funds to be paid.

5 THE COURT: So, let me maybe sharpen this a bit or at
6 least focus on what I am interested in right now.

7 MR. BALTHAZARD: Okay.

8 THE COURT: CATIC makes whatever settlement it makes
9 with either the lender or the prior lienholder. That means
10 CATIC is out that money.

11 MR. BALTHAZARD: Right.

12 THE COURT: In the case, for example, I am just
13 looking at the Beauford Lane property. There is still a
14 balance after that, and the credited home lenders are out that
15 balance. CATIC has to look to Ms. Goode-James, I guess --
16 putting to one side restitution in this case -- but in the
17 civil context they would have to look to Ms. Goode-James for
18 it. The accredited home lenders look to the persons who had
19 the mortgage, I guess, is that right, like the owners of
20 Beauford?

21 I just want to understand who the various purported
22 recipients of restitution here have as alternative civil action
23 defendants.

24 MR. BALTHAZARD: Just to clarify with respect to
25 Beauford Lane, the loan was ultimately resold; it was now with

1 HSBC. I mention that, I included that in the Government's
2 sentencing memo to clarify.

3 THE COURT: That just means they purchased whatever
4 chosen action.

5 MR. BALTHAZARD: Yes. I understand that this
6 settlement has not been completely finalized and it's close to
7 being. But assuming it is done in the way that is set forth
8 here, which is what I believe the parties anticipate, at the
9 end of that CATIC will have paid \$105,000, HSBC will have
10 settled for \$168,000 less than it was due and owing as of the
11 time of this, I believe as of the time of the settlement, it
12 might have been an earlier period, and HSBC will, if I
13 understand it correctly, will assign all of its rights to
14 CATIC. So, at that point HSBC would not have any rights
15 against the borrower.

16 THE COURT: Okay. And that's part of the settlement
17 with CATIC that the lenders had?

18 MR. BALTHAZARD: It's my understanding that with
19 respect to each of these, whichever lender CATIC settles with,
20 CATIC obtains all of its rights, all of the rights on the
21 mortgage and on the note that previously belonged to that
22 particular lender.

23 THE COURT: This, then, brings me to a third point. I
24 am just trying to understand the universe here. The
25 Government's motion for forfeiture; it is simply a collection

1 mechanism, then, on behalf of the victims?

2 I do not see the government as, unlike other cases,
3 the government being the party entitled to restitution, but
4 they are the ones who are moving for money judgment in the
5 Judgment and Commitment Order, and I just want to understand
6 how that works.

7 MR. BALTHAZARD: The government does that as a matter
8 of practice under the law, seeks forfeiture. I believe in
9 every case we attempt to do so. If we obtain forfeiture of
10 property, my understanding is that it is not automatically
11 intended for restitution, although often that is in practice
12 what's done with it.

13 THE COURT: Assume a case like this in which my
14 inclination would be that the priority goes to the people who
15 are actually out money, not to the government, that a fine is
16 unlikely, given the size of the restitution. What is the
17 office of the forfeiture? Are you simply a collection agent
18 for the restitution victims?

19 MR. BALTHAZARD: Effectively, that's what we would be
20 in a position of.

21 THE COURT: Why would I do it, then? Having given
22 restitution to parties who are presumably capable of recovering
23 themselves, why would I do forfeiture? I have never seen it
24 quite in this posture, so I am just a little uncertain about
25 how it works. It is one thing when it is fraud against the

1 government, which is a customary mechanism for forfeiture, or
2 it is a so-called victimless crime but a crime in which there
3 is property that is kicking around and the government gets it,
4 but I do not understand what the government properly can get
5 here for forfeiture.

6 MR. BALTHAZARD: There is no particular identified
7 property, obviously. I know that I have had this in previous
8 cases, in fact, a recent case, where there was, in fact, funds,
9 stolen funds that the government seized, and we sought an order
10 of forfeiture which the Court entered, and then with respect to
11 that, because there actually was --

12 THE COURT: Right. A race.

13 MR. BALTHAZARD: -- funds, then the victims were
14 entitled to make a claim against it, and I anticipate that they
15 will ultimately get that money. In this case there is no known
16 funds, so that if the Court does not enter it there is not a
17 specific harm in this case because there is no known funds
18 available.

19 THE COURT: Now, let me ask one other question, then I
20 will go back to the question of the enhancement. The
21 government says that there was no information provided by the
22 defendant as to where this \$1,100,000 and change went. Is that
23 the case?

24 MR. BALTHAZARD: The PSR reflected that the probation
25 officer inquired, and the report states that she declined to

1 provide any information at that point.

2 THE COURT: Did the government ask in the course of
3 the proffer in connection with the plea?

4 MR. BALTHAZARD: I don't believe there ever was a
5 proffer in connection with this plea.

6 THE COURT: Well, the government has moved for a
7 reduction in the guideline for the acceptance of
8 responsibility, but we don't know where the money went.

9 MR. BALTHAZARD: We have not had an answer from the
10 defendant as to where the money went. I have attempted to lay
11 out the best -- the Government's been able to determine in the
12 sentencing memo based on a review of the IOLTA and operating
13 fund bank account records that we obtained in connection with
14 the investigation, and review of that reflects that the monies
15 are gone. Where they went it's really not -- based on the
16 documents and the records we obtained, not able to say that the
17 funds went specifically here or specifically there.

18 There do not appear to be a direct correlation between
19 the monies that came in from these particular lender victims
20 and monies that went out. The account statements and the
21 particular withdrawal items that we did get seem to reflect
22 that the funds were entirely commingled, that they were used
23 for other general operating purposes, including real estate
24 closings, but that also a significant portion was then
25 transferred to Ms. Goode-James' operating account and a

1 significant amount of personal expenses were paid.

2 THE COURT: Well, when you say used for "real estate
3 closings," what does that mean?

4 MR. BALTHAZARD: It appears, again just based on the
5 records we have, and we did not obtain every item reflecting
6 funds going out of that account during the period of time, and
7 one of the reasons was as we got going in this investigation
8 Ms. Goode-James did come in at a relatively early point and it
9 appeared --

10 THE COURT: When did she first come in to you?

11 MR. BALTHAZARD: I don't have the date, your Honor.
12 In fact, I took this case over after it was originally charged,
13 so I was not involved in the investigation prior to that, so I
14 don't have the date as to when she first came in. I'm sure
15 Mr. Sultan will be able to answer that question.

16 THE COURT: Let's go back then, Mr. Sultan, to the
17 question of enhancement for abuse of trust. Isn't it the case
18 that, as recited by the CATIC representative, that there is a
19 fairly substantial amount of discretion involved and the
20 exercise of what at least in this state is called legal
21 judgment in the responsibility of a conveyancing attorney?

22 MR. SULTAN: Well, your Honor, when I started looking
23 at this I simply assumed that Ms. Goode-James was an attorney.
24 Attorneys occupy a position of trust sort of professionally in
25 the world, and that would be enough. But, since, obviously, as

1 the Court knows now, it's a functional analysis, is there a
2 substantial discretion exercise. To me, and I have never been
3 a closing attorney, but just reading these instructions that
4 are in the record, I mean, I could think of almost nothing more
5 ministerial than basically you have to go to the Registry of
6 Deeds, you have to check the title to see if there's any
7 encumbrances, you have to basically certify there are no
8 encumbrances, and you have to disburse the funds according to
9 the precise, specific instructions of the lender. There's no
10 discretionary judgment involved then in that process.

11 THE COURT: Isn't there discretionary judgment
12 exercised in the certification? You look at a title. The
13 title may run for a fairly substantial period of time -- it may
14 have all sorts of liens and encumbrances on it, and you make a
15 judgment about whether or not to certify.

16 MR. SULTAN: Well, if in the abstract you could say
17 there are certainly situations where it could be a question of
18 judgment, then you have the second prong, which is that you
19 have to show that the exercise -- that that was involved in
20 these particular transactions, and there's nothing I have seen
21 in any of these three transactions that indicated that were any
22 particular title issues or any close questions or any judgment
23 involved.

24 THE COURT: You mean that there has to be proof in
25 each individual case that there was some challenge presented by

1 the responsibility of the closing attorney in a title search?

2 MR. SULTAN: Well, no, your Honor, but that the
3 position of that -- that the substantial -- that the position
4 of exercising substantial discretion, there must be some nexus
5 between that position and the offense that was committed, the
6 idea being that being in that position to exercise discretion
7 contributed in some causal way to the actual offense.

8 THE COURT: Well, but there is nobody here among the
9 victims or her principals, because I guess there are really two
10 principals here, one, the title insurance company and the other
11 the lender, who exercises any judgment with respect to
12 certification or determining whether or not the title is clean,
13 clean enough to permit the monies to be expended. It all falls
14 on her.

15 MR. SULTAN: It does, your Honor, yes, that's true,
16 and the question, I suppose, is whether she is exercising
17 substantial discretion or whether she is simply carrying
18 ministerial tasks. I can see the arguments both ways, but I
19 think that given her responsibilities, how they are laid out
20 and what she did in these cases, to call this an exercise of
21 substantial discretion I think is a stretch. That's the
22 argument.

23 THE COURT: I understand the argument, I think. I
24 reject it. This, it seems to me, is one of those areas in
25 which attorneys exercise substantial discretion upon which a

1 great deal of money rests, and they look to the exercise of
2 judgment by those who do the title conveyancing work for them.

3 So, I do reject the challenge to the enhancement for
4 abuse of trust.

5 I note also, and the government has as well, that an
6 alternative way of looking at this is under 3B1.3, that she was
7 exercising a special skill that is not possessed by members of
8 the general public and usually requires substantial education,
9 training or licensing, and so for those reasons I overrule the
10 objection there.

11 Now, is there any other matter under the *Guidelines*
12 that we need to take up?

13 MR. SULTAN: No, your Honor.

14 THE COURT: So that we're clear on the *Guidelines*,
15 then, we are dealing, principally because of the amount of
16 money involved here, with a total Offense Level of 24, 16 of
17 which is generated by a loss of more than \$1 million to several
18 victims and a gain of more than \$1 million to the defendant.
19 She has a Criminal History Category of I, she has no prior
20 convictions, and under these circumstances the guideline range
21 is 51 to 63 months' incarceration, supervised release for two
22 to three years and a fine in the range of \$10,000 to
23 \$8,585,376. There is restitution in the amount of
24 \$1,141,861.22, and there is \$400 worth of mandatory Special
25 Assessments. Are we dealing with the same set of numbers here?

1 MR. BALTHAZARD: Yes, your Honor.

2 THE COURT: Now, I do want to, because it goes to the
3 judgment, pursue the forfeiture issue. I guess I just do not
4 understand why I should be making a money judgment of
5 forfeiture here. Is there anything else beyond what we have
6 discussed?

7 MR. BALTHAZARD: There is nothing else to add.

8 THE COURT: So, I think I should tell the parties that
9 I am not going to make that money judgment forfeiture in this
10 case. I just have some substantial questions, but I do not
11 think they should deter us here, because we have victims who
12 are, I think, capable of defending themselves in this context.

13 Now, I do want to hear a little bit from the
14 government. Of course, I have its recommendation, which I
15 understand to be 51 months' incarceration. Is there anything
16 further that you want to say?

17 MR. BALTHAZARD: Yes, your Honor. The recommendation,
18 as included there, is 51 months in prison, which is at the
19 bottom of the guideline range, three years of supervised
20 release. The government would not recommend a fine, given the
21 amount of the restitution, the \$400 special assessment and the
22 amount of the restitution as the Court has already stated.

23 The reasons primarily for this recommendation, first
24 of all, and probably most importantly, is the seriousness of
25 the offense. If we focus on the amount at issue, which is over

4 THE COURT: Can I just understand how many closings
5 were done during that time period?

7 THE COURT: Yes.

10 THE COURT: Sure.

11 (Pause)

18 THE COURT: Is this the first time that she functioned
19 as an agent of a title insurance company?

22 THE COURT: Okay.

25 We have also in this case three different types of

1 victims. We have the lender who actually provided the funds,
2 the title insurance company in this case, both of whom, as the
3 Court has heard, had to rely on her services, had to rely on an
4 attorney to represent their interests, to carry out the
5 closings, to do all of the things that she was obligated to do
6 on their behalf.

7 Also, the fact that in this case the funds ultimately
8 ended up either indirectly or directly for her personal benefit
9 either through direct use of proceeds commingled for personal
10 expenses or that the funds went into her operating account and
11 were used generally for running her business for other --

12 THE COURT: Let me understand how the impact on the
13 individual borrowers, how that works in this context. I have
14 information from the Bembridges, representations regarding the
15 Bembridges that it has had an adverse effect, obviously, on
16 their credit and that sort of thing. Presumably they are being
17 asked by somebody to pay some more money. So, I guess I want
18 to understand.

19 MR. BALTHAZARD: Presumably. The initial impact on
20 them was to learn at some point that, in fact, she had not done
21 what she was obligated to do, that she had not paid off the
22 underlying mortgage, that they were at that point obligated on
23 two mortgages on their one property, essentially doubling what
24 they were owed on a monthly basis in general figures.

25 I don't have the information as to what their current

1 negotiations are. I understand that the Bembridges have
2 retained an attorney to represent them in negotiating with the
3 lenders and trying to resolve their situation. I believe their
4 property went into foreclosure. I believe that all three of
5 the properties ultimately were foreclosed on.

6 Mr. Wood did not submit a Victim Impact Statement.
7 Mr. Wood in this case -- in addition to just being a lender
8 homeowner, Mr. Wood had actually sought out Ms. Goode-James to
9 assist -- not assist him and represent him, but he had sought
10 her out in connection with his refinancing because he had had a
11 prior relationship with her, he knew her and knew her as an
12 attorney. So, there was that breach of trust, even though,
13 again, he was not directly a client at that point, but this was
14 not a situation where --

15 THE COURT: Well, just so I am sure I understand this,
16 each of the borrower victims remains obligated, as a legal
17 matter?

18 MR. BALTHAZARD: As a legal matter --

19 THE COURT: Put to one side as a practical matter
20 whether some negotiation can be made. They are obligated for
21 the amount of both the loan made and the loan not discharged,
22 and they are obligated to whoever but probably CATIC on this?

23 MR. BALTHAZARD: Ultimately CATIC would be the other
24 lender.

25 THE COURT: Right, because it is taking over the

1 settlements.

2 MR. BALTHAZARD: Exactly. That is with respect to two
3 of the properties, the Speedwell Street, which was owned by the
4 Bembridges, and Brookledge Street, which was owned by Mr. Wood.

5 The Beauford Lane is a different situation. That was
6 originally purchased in the name of Shelly Britto, who was a
7 friend of Ms. Goode-James, and Ms. Britto understood that she
8 was essentially buying it in name only, that it was an
9 investment -- that's how it was represented by Ms. Goode-James
10 -- and that Ms. Goode-James was going to be handling collecting
11 the rent and paying the mortgage. That was the original
12 purchase and the original loan.

13 And then, unbeknownst to her, Ms. Goode-James effected
14 a transaction that really was a sham conveying title to her
15 husband, and that was the second transaction in which she
16 obtained -- in which the second loan was obtained from which
17 she took the proceeds. That title was never actually recorded.
18 So, in that situation, Ms. Britto still only remained obligated
19 on the first mortgage, not the second.

20 THE COURT: So, the second mortgage has never been
21 recorded, and consequently --

22 MR. BALTHAZARD: No. I believe the second mortgage
23 was recorded but the transfer of title to Mr. James was not
24 recorded. There was no recorded deed from Ms. Britto to
25 Mr. James.

1 THE COURT: So, who owns the property now, as far as
2 you are concerned, if you know?

3 MR. BALTHAZARD: I don't know, but the title -- there
4 was no recorded deed to Mr. James. The record reflects that it
5 is still owned by Ms. Britto.

6 THE COURT: Do you want to speak to the personal
7 circumstances that have been raised in the defendant's
8 Sentencing Memorandum and the very substantial letters in
9 support?

10 MR. BALTHAZARD: I do.

11 Well, I would first like to say with respect to her
12 argument that the Court should show leniency because of the
13 good that she's done in the community, I think the substantial
14 harm that's been done to other people in the community, in
15 particular Mr. Wood and the Bembridges, and even, arguably,
16 Ms. Britto, is to the contrary and outweighs that.

17 And I really think that the letters, they are
18 significant, and I think it says something about her that these
19 people are willing to write these letters. But in reading the
20 letters -- and this sort of brings me to the issue of
21 deterrence in this case, which I think is important and
22 important beyond just the purpose of deterring other attorneys
23 from stealing client funds, and I think that that is an
24 important factor -- but the people that she worked with and the
25 letters, they I think seem to reflect a lack of understanding

1 of what this is about or the significance of this case.

2 Granted, they are focused on her good qualities, and that is
3 why they submit these letters, but there seems to be a real
4 disconnect between how she holds herself out as a role model
5 and somebody who is trying to help her community and her
6 actions in this case and what she seems to be seeking as a
7 consequence of that. She seems to be saying that, Because of
8 all that I should get some type of lenience, and I am not sure
9 what sentence in particular she's going to be arguing for, if
10 any particular sentence, but I think it's just to the contrary.

11 She's holding herself out and has held herself out as
12 a role model to these people. She's got this *Career Road Map*
13 *for Girls* DVD, she's continuing to hold herself out as a role
14 model both with that DVD -- according to the PSR and the
15 sentencing memorandum she goes out and she speaks to young
16 people and others in the community.

17 I think it's the wrong message in this case to send
18 that you can make something of yourself, you go to school, you
19 work hard, you make something of yourself, you become a
20 professional and you steal from your clients and there is no
21 real consequence to that. I think that's the opposite of what
22 she wants to be or what should be said to these young girls
23 that she's trying to reach out to and help.

24 She talks in the materials and on her website about
25 helping these young girls when they are faced with difficult

1 choices and what you are supposed to do.

2 I think the message that should come from the Court
3 today is that you do the right thing, you do get a good
4 education, and when you are faced with a difficult choice and
5 one of them is you steal from your clients, people who trust
6 you, you commit a crime, that's not the way you go, and if you
7 do that there's going to be significant and harsh consequences
8 to that.

9 I think that that really is the answer to those
10 letters and the background that she has, that it really doesn't
11 speak to a lesser sentence; it speaks to the need to send the
12 right message to those people who are aware of her situation
13 and are looking to see what is going to happen here today.

14 THE COURT: All right. Thank you.

15 Mr. Sultan.

16 MR. SULTAN: Thank you, your Honor. I think the Court
17 is in the position today of having to sentence an extraordinary
18 person for what I can say, and I don't mean to minimize it, is,
19 in this courthouse at least, a garden-variety kind of a crime.
20 In that sense, I think this case exemplifies the kind of case
21 where the Court can make and should make a different decision
22 in --

23 THE COURT: I am captured by the reference to
24 "garden-variety," which may have been an improvident use of
25 words, because you are correct that I see embezzlements on a

1 regular basis, not so regular on the part of attorneys. But
2 there is a hierarchy of these crimes that is basically driven
3 by the amount of money involved, and this is an extraordinary
4 amount of money --

5 MR. SULTAN: Oh, I understand that, your Honor.

6 THE COURT: -- and you know I am going to ask where
7 did it go.

8 MR. SULTAN: I understand it's a lot of money, and I
9 understand that that is what drives sentencing to a
10 considerable extent, but nevertheless, we are in a post-Booker
11 world, where the Court is no longer completely hamstrung by
12 that consideration.

13 THE COURT: It is not a matter of being hamstrung, and
14 you understand I am trying to ensure that you are speaking to
15 the things that are on my mind.

16 MR. SULTAN: Yes, your Honor.

17 THE COURT: One of the things that is on my mind is
18 disparity. I will use as an example, just because it is an
19 example, a recent one. I sentenced an individual who took
20 Social Security checks for his father. His father had been
21 dead for 15 years. He kept taking them. It was \$200,000. He
22 was 63 years old. I imposed a sentence of 18 months on it. It
23 was a guideline sentence. I thought it was within the range of
24 that, but I recognized that he had an otherwise -- not a life
25 of extraordinary work that Ms. Goode-James has, admittedly, but

1 except for stealing over \$200,000 of the government's money, a
2 layman's life.

3 This is a case of, except for taking a million,
4 hundred-thousand and some change of other people's money,
5 including people who are every bit as vulnerable as some of the
6 people that she has devoted her life to, when I look at it as
7 garden variety, then it seems to me to fall in predictable
8 patterns.

9 MR. SULTAN: Well, your Honor, as I said in my
10 sentencing memo and I will repeat today, I think in terms of
11 the offense conduct it is, I think in terms of the offense
12 conduct.

13 And I think the Court is absolutely right to be
14 concerned with disparity. Your Honor sentences lots of people,
15 but there are certain disparities where it is appropriate for
16 the Court to take into account the individual who is before it.
17 It's not merely to sentence every individual to precisely the
18 same sentence for precisely the same offense, which is
19 essentially what the *Guidelines* prescribe.

20 THE COURT: Well, no. The sentencing office asks me
21 to tailor the sentence properly to the individual and all of
22 that. But one of the considerations always is, and it arises
23 more in white-collar crime, broadly conceived, good works for
24 the community, lots of money taken. Here the good works for
25 the community are part of her genes, not something that she

1 reached out to do. It seems to me that she was from a very
2 early stage in her life committed on that. And she has had
3 difficulties in her life, although some of her own making.
4 Lots of people have difficulties in their life.

5 But I wonder how I get untethered from the harm to the
6 borrowers, who are vulnerable, and the amount of money.

7 MR. SULTAN: Well, let me talk about those two issues,
8 then, your Honor.

9 With respect to the harm to the borrowers, and it is
10 an important issue, let me say a couple of things. First,
11 based upon CATIC's own submission, at least that I saw to the
12 Court, as I understand it CATIC is on the hook, basically.
13 CATIC is responsible under its agreement to essentially cover
14 any defalcation of its agents on these transactions. So, I see
15 no evidence that any of these individuals are on the hook for
16 anything.

17 THE COURT: That may be so. That is why I was asking
18 these questions early on. I do not really know what the
19 defenses that the Bembridges can put up are, if they can even
20 mount a defense, which is a costly undertaking in any event, so
21 they have to negotiate.

22 But this much I know; that on its face they are on the
23 hook for other loans, and I am not sure that they have a claim
24 over against -- I do not know what kind of claim they have over
25 against CATIC under these circumstances. I can conceive of

1 them, that CATIC stands in the shoes of Ms. Goode-James in more
2 ways than one. But what has happened is that these people's
3 lives have been profoundly affected and not for short money.
4 This is the core of somebody's life.

5 MR. SULTAN: Well, I don't minimize that, your Honor.
6 And, frankly, even if they are not on the hook for the money,
7 as Mr. Bembridge's letter indicates this had a huge effect on
8 his and his wife's credit rating.

9 But on that point, let me just say one thing.
10 Mr. Bembridge raises a very important point in his letter,
11 which is, he says he doesn't understand why it took basic -- in
12 December of 2008, which is when he is first retaining counsel
13 and dealing with his situation, he doesn't understand why it
14 took so long for somebody to figure out basically that he
15 didn't do anything wrong and to rectify his credit rating.

16 Now, Ms. Goode-James, through me, went to the Suffolk
17 County Prosecutor in April of 2008. She's not off the hook.
18 She started this, this is her crime. But, frankly, I don't
19 understand why after April of 2008 the banks, the title
20 insurance agency and the government didn't take steps to make
21 sure these individuals were not being unfairly essentially hit
22 with the consequences and with the notion that they had failed
23 to pay a debt.

24 THE COURT: It is not quite in the category of blaming
25 the victim, but it comes close.

1 MR. SULTAN: Well, I am not blaming the victim, your
2 Honor, but the fact is that there was a period of time when --
3 efforts were not made to mitigate damages, I suppose is what I
4 am saying. And I am not in any way minimizing
5 Ms. Goode-James' -- this is her fault, and she takes
6 responsibility for what happened. But I just think that's
7 something that should be -- your Honor raised that issue about
8 to what extent this has hurt the borrowers, and I think it's a
9 point that I need to make.

10 THE COURT: I do, and I guess I think, without having
11 really any full understanding of the respective
12 responsibilities of the several victims here, that's why I
13 asked the question early on, she is a substantial motivating
14 cause of the harm to them --

15 MR. SULTAN: Of course she is, your Honor.

16 THE COURT: -- and that cannot be shifted to other
17 people.

18 MR. SULTAN: Absolutely not. That's hers. That's on
19 her. Yes, your Honor.

20 And as far as the amount of the loss, yes, it's over
21 \$1,000,000, and that's a lot of money, and I have, through my
22 investigation, through looking at all of the records, through
23 speaking to my client, I don't think I can say to the Court it
24 went to this spot.

25 I think a couple of things are clear. It was

1 commingled with all of her other business accounts that were
2 real estate transactions that were coming in and out all the
3 time. Yes, there were expenses out of that account that went
4 to her that went to personal expenses, paid off credit cards,
5 dinners.

6 There is no evidence at all that she was living some
7 flamboyant, luxurious lifestyle, there's no evidence that she's
8 got some pot of money sitting somewhere. So, I can't give the
9 Court a clean answer to that, but the fact is she took the
10 money, she used the money, and she is responsible for that
11 money.

12 THE COURT: It seems like a lot of money to go through
13 in a relatively short period of time. I see the government
14 gives me snippets like paying off her husband's Jaguar or
15 references to various kinds of higher-end merchandise outfits.

16 But I am just searching for what happened to it. It
17 is one thing to say, "We had an unbelievable medical problem
18 and it was devoted to that." That is something I see all the
19 time in embezzlement circumstances, which I broadly conceive
20 this to be. But I do not see anything. This is just kind of
21 augmenting income.

22 MR. SULTAN: Your Honor, this was also a time when
23 there were these real estate transactions that were going on in
24 the community, and to the extent that in a misguided way to try
25 to help people she advanced certain people monies. That is

1 where part of it went, but she is not in a position to come
2 before the Court and account for that, and, therefore, I don't
3 feel comfortable saying basically she used this money for good.

4 THE COURT: Well, when you say "advanced money," I am
5 not sure I understand that.

6 MR. SULTAN: Well, people who didn't have funds to pay
7 their mortgages and were in danger of foreclosure, that perhaps
8 she loaned money to those people.

9 THE COURT: But without documentation.

10 MR. SULTAN: Correct, your Honor. But I am not here
11 to tell the Court -- I can't prove that, your Honor, and
12 therefore, I am not comfortable making a representation to the
13 Court that she was, you know, basically functioning as Robin
14 Hood. That's not what I am saying to the Court.

15 I am saying I cannot account for the money, but there
16 is no evidence it went to her living a luxurious life or that
17 she has any money stashed anywhere, and that's really all I can
18 say. I understand that doesn't completely satisfy the Court's
19 curiosity, but that is really the best we can do with it.

20 THE COURT: Well, it is not idle curiosity.

21 MR. SULTAN: It's not idle curiosity, your Honor. The
22 Court has a right to know that, to ask that question in light
23 of the issue of sentencing.

24 Now, one of the things about the amount of loss, and
25 it is a lot of money, but under the *Guidelines* again, frankly,

1 if the amount of loss was twice the amount it would fall in the
2 same guideline range. So, it's a pretty wide swath that the
3 *Guidelines* cut in this area, and, yes, she is over that
4 threshold.

5 THE COURT: Not to be arch about it, but wasn't it
6 Everett Dirksen who said, "A million here, a million there, it
7 is going to add up after a while"? This is a lot of money no
8 matter what.

9 MR. SULTAN: Your Honor, I am not minimizing the
10 amount of money. I would not stand here and tell the Court
11 there should be no serious consequence for this. This is a
12 serious crime, she is a lawyer, it's over a million dollars.
13 You start there, okay?

14 So, I understand the Court starts there. That's why
15 we start with 51 months, which is a lot of time in prison for
16 somebody who has basically lived an exemplary life. So, I
17 guess I understand the Court starts there and properly starts
18 there, but I want to at least argue to the Court that there are
19 some good reasons why the Court should deviate substantially
20 from that number.

21 I know a lot of this is laid out in my memo. If the
22 Court will indulge me for a few minutes I just want to give the
23 Court some reasons.

24 THE COURT: Sure.

25 MR. SULTAN: Ms. Goode-James has -- the contributions

1 she's made to the community, your Honor -- and your Honor
2 talked about disparity, but there are different kinds of
3 people, and she is a person who has put her heart and her soul
4 into her community for decades. Does that make her different
5 from some other people? Yes, it does. Is that something that
6 should count for something when she's before the Court to be
7 punished? I submit it does.

8 And if the Court looks at the letters -- for example,
9 the letter of Mr. Dohan, who is here, Exhibit 10, who was her
10 supervisor at the Youth Advocacy Project for many years. I
11 mean, that letter, to me, that's Exhibit 10, really it gives
12 the Court such insight into who this person is and what she
13 did, how hard she worked to help the young people particularly
14 in her community for years and years and years. That's who she
15 is.

16 This crime is also part of who she is, but in the
17 context of her life this crime is aberrant. Yes, it wasn't a
18 one-time thing; she did it three times over three years.

19 THE COURT: Is it over three years or a year and a
20 half?

21 MR. SULTAN: Well, one in late 2005 -- you're right,
22 your Honor -- late 2005 to early 2007 -- it's over a year and a
23 half. But it was three different occasions, and as she
24 explains in her letter to the Court, which is Exhibit 1, sort
25 of once she did it she kept doing it and she didn't know how to

1 get out of it. That's no excuse, but in the context of her
2 life, which has been an extraordinarily giving and generous
3 life, this is aberrant conduct.

4 Now, her contributions to her community should also be
5 looked at in the context of the struggles that she'd had to
6 undergo. And your Honor alluded to them. Yes, everybody has
7 tough times in her lives, that's true, but she has had some
8 particularly tough times.

9 She was a teenage single parent, and as a single
10 teenage parent she decided she was inspired to go to college,
11 to go to law school. She worked her way through college and
12 law school. Yes, she did receive a small scholarship, the
13 Wayne Budd scholarship in law school, but that was for less
14 than \$1,000. She worked her way through college and law school
15 as a single parent because she wanted to become a lawyer. This
16 was her dream, to help her community by being a lawyer. It was
17 not easy for her, and she ultimately succeeded in fulfilling
18 that dream.

19 And then, having fulfilled that dream, she got herself
20 into an abusive marriage, a seriously abusive marriage, and,
21 yes, I guess that's her fault, she chose the person that she
22 married, but that was immediately before this offense conduct
23 began. As Dr. Baxter's report indicates, I mean, it was
24 against the backdrop of these things that were going on in her
25 life, which were pretty overwhelming.

1 She was a solo practitioner in Roxbury with no backup.
2 She had one person working for her and he got murdered and he
3 was someone who was very close to her.

4 None of these are excuses, but this is a woman who was
5 really kind of, you know, lost at sea, and she's lost at sea
6 and with all of these things happening to her, and now she's in
7 the situation where millions of dollars are being funneled
8 through her accounts without anybody really paying attention to
9 where they're going or what's happening. And she, in that
10 situation, under those pressures and whatever other motivations
11 she had, she succumbed to a temptation, and she's suffering and
12 she's going to suffer a tremendous consequence for it.

13 When it did start coming to light, initially through a
14 BBO complaint, she immediately wanted to take responsibility.

15 THE COURT: Let me understand the chronology --

16 MR. SULTAN: Yes, your Honor.

17 THE COURT: -- of that. There is a BBO complaint by
18 whom? Was it CATIC?

19 MR. SULTAN: I think it was -- it started with a
20 bounced check, your Honor, in the Fall of 2007, but then there
21 was a CATIC complaint I think in December of 2007. The CATIC
22 complaint was on one of these three properties. I forget which
23 one, but it was one.

24 And after that happened, number one, she voluntarily
25 agreed to a suspension of her license immediately; and, number

1 two, she authorized me or directed me in April of 2008 to go to
2 the prosecutor.

3 At that point I went to the Suffolk County District
4 Attorney's Office and asked to meet with them and not only told
5 them about all three of these transactions, gave them documents
6 basically saying this is what my client has done, she wants to
7 take responsibility, she's prepared to be prosecuted and plead
8 guilty.

9 Now, that was after the BBO was investigating. I am
10 not pretending that she did this at a time when nobody knew
11 about this, but she did it very early. I had no reason to
12 believe at that point there was a criminal investigation,
13 although certainly you could look at the facts and say, well,
14 one's coming down the pike.

15 THE COURT: Hard to believe that there would not be a
16 criminal investigation.

17 MR. SULTAN: Well, I think that's right, your Honor.
18 But as soon as -- very early she wanted to own up to it, and
19 not only own up to it legally, but I think she had a sense of
20 shame and remorse and all of those things that go with it, and
21 she had trouble opening up to her family, to her husband, to
22 her parents. She was dealing with the reality of what she had
23 done. As soon as we learned that there was, in fact, a federal
24 investigation --

25 THE COURT: When was that?

1 MR. SULTAN: Your Honor, it was the beginning of -- it
2 was at the end of 2008 or the beginning of 2009. I am not
3 sure. I think her husband received a subpoena, a grand jury
4 subpoena, and that is when I learned for the first time and my
5 client learned that there was a federal investigation.

6 THE COURT: Was that in connection with the Britto
7 transaction?

8 MR. SULTAN: It was all three, your Honor, at that
9 point. I called the prosecutor, whose name was on the
10 subpoena. I said, "My client wants to take responsibility; she
11 wants to plead." She agreed to draft an information. She
12 asked me to come in to go over the facts, and that's how we
13 proceeded. So, again, it was after it had begun to come to
14 light, and I don't mean to suggest otherwise, but in the scheme
15 of things it was early, and she owned up to it and she didn't
16 want to fight about anything. She basically said, "I did
17 this," and, you know, "I need to take the consequences."

18 Your Honor, with respect to her character, again, I
19 think that the letters are important, and the letter from
20 President Jenkins-Scott of Wheelock College, her husband's
21 letter, her own letter, again, I think give the Court some
22 insight into what an unusual, what a giving, what a
23 compassionate person Ms. Goode-James is and has been throughout
24 her life.

25 Now, the prosecutor says, well, she shouldn't go

1 around sort of holding herself out as a role model. I have a
2 problem with that argument, I think, because, yes, she's done
3 what she's done. She could, I suppose, hang her head in shame,
4 stay in her house and not do anything constructive for the rest
5 of her life, but that's not who she is. She is going to take
6 the consequences that this Court imposes and she's going to go
7 on trying to help people, because that's who Andrea Goode-James
8 is.

9 And as President Jenkins-Scott of Wheelock College
10 says in her letter, Exhibit 9, she says that she is an
11 excellent role model. "She is an example for our students of
12 how one can get entangled in a downward cycle where one's
13 values and integrity are compromised." That certainly happened
14 here. "Yet, she demonstrates that during such challenging
15 times, one can also reclaim one's integrity and purpose in
16 life. An important lesson to learn."

17 So, I think it's to her credit that she's out there
18 making this *Career Road Map for Girls*, that she's out there
19 trying to do as much good in her community that she can for
20 every day that she has to do it in the community with every
21 breath in her being, and I think that speaks volumes about who
22 she is. She is not doing it to impress the Court, she is doing
23 it because that's the person that she is. That's why all these
24 people are here, because they know who she is as a human being,
25 not just for the offense conduct that she committed.

1 For all those reasons, your Honor -- and, finally,
2 your Honor, there is her family situation. And I said in my
3 memo, look, everybody has a family, and it hurts family members
4 in every case when a loved one goes off to prison, there is no
5 doubt about that.

6 She has a four-month-old baby boy who needs his
7 mother, and that is something that I think the Court can take
8 into account. Does it wipe out everything else? Of course
9 not, but it's part of what's before your Honor.

10 THE COURT: Well, here is the issue -- and it is not
11 something I think I properly can inquire in except to note --
12 which is that using the chronology that we dealt with, the
13 decision, to the degree it was a conscious decision to have
14 another child, took place at a time when she was exceptionally
15 vulnerable, vulnerable to some consequences.

16 MR. SULTAN: Well, your Honor, she had a new husband
17 and they wanted to have a child together, and she's at the age
18 where it was now or never. So, again, I suppose the choice is,
19 well, sorry, you're facing a criminal investigation, you
20 shouldn't have a child, or you go and live your life.

21 THE COURT: It is different from that, and this is, I
22 think, a very challenging aspect of it. It is the
23 sword-and-shield problem that is presented by an argument about
24 a very young child who is brought into the world at a time of
25 vulnerability for the parents. All of those things should be

1 affirmed, that is, the choice to have children and realize
2 aspects of the marriage. On the other hand, is it a factor to
3 be considered and grounds for departure or deviation, or does
4 it just simply fall out of it?

5 There is a larger issue here. Maybe you want to
6 address it, maybe you do not. The *Guidelines* used to say that
7 they were gender-neutral, which has a nice sound to it in other
8 contexts. But as a practical matter, mothers, women, bear
9 different responsibilities and create different vulnerabilities
10 for loved ones. Now, maybe as a matter of social policy or
11 public policy, we just say, well, men and women are equal, and
12 it is the equality of forcing them to live under the bridge or
13 at Framingham or at Danbury.

14 But it is a troubling problem to me, because I am not
15 sure that as a practical matter that is the case. The
16 sentencing of a woman, a mother, imposes additional impacts,
17 collateral damage, if you will, that is not necessarily true of
18 husbands or men in the customary conventional social
19 organizations that we have.

20 Now, the question for me is do I take that into
21 consideration in this context? If it were Mr. James would I
22 take it into consideration in the same way?

23 MR. SULTAN: Well, I think it's a great question, your
24 Honor, and I think the reality -- and I am saying this
25 anecdotally -- is that women in this courthouse and in other

1 courthouses generally receive more lenient sentences than men.
2 I can't prove that, but that's certainly what I believe to be
3 the case, and I believe that part of the reason for that is
4 exactly what your Honor just articulated, that they are, in
5 fact, in a different situation, particularly with respect to
6 their family responsibilities, and Courts, properly or not,
7 take that into account.

8 And I think they should take it into account not as a
9 grounds for departure. If we were talking pre-Booker about
10 whether that constitutes a ground for departure under Section
11 Five of the *Sentencing Guidelines*, I would agree that it
12 doesn't. But now, under a broader consideration of the
13 character and circumstances of the defendant, I think the
14 Court, frankly, is stuck now with the much more difficult job
15 of taking it all into account, and that's why your Honor has
16 life tenure and that's why it's your call not to call the
17 Sentencing Commission.

18 So, I think it's part of the whole ball of wax, it's
19 part of what the Court is doing in sentencing her, and I don't
20 think the Court should turn a blind eye to any part of that
21 totality of circumstances. It's a difficult task the Court
22 has, I understand and I agree with that, but I think properly
23 so, I think properly so.

24 I think if the Court takes all of those circumstances
25 into account that I've outlined, particularly who she is, who

1 she's been, then I think the Court will agree that a 51-month
2 sentence in this case is far more than necessary and is not
3 appropriate under all these circumstances, and that a
4 substantially lesser sentence is appropriate.

5 I haven't come up with a sentence. Obviously,
6 Ms. Goode-James would be much happier not being separated from
7 her family, being in a halfway house. If the Court doesn't
8 choose to do that and she has to go away for a period of time,
9 she will do whatever the Court, obviously, orders, and she will
10 be the same person; she will come out the same person that she
11 is now and come back out and help her community when she comes
12 out the same way when she went in.

13 But I ask the Court to take the totality of
14 circumstances into account, not look at this in a
15 straight-jacketed, guideline kind of way. Recognize that, yes,
16 we are talking about disparity, but she is a unique individual.
17 She deserves to be treated in some respects differently from
18 other people who don't share her history, her background, her
19 contributions to her community.

20 And if the Court takes those into account, I think the
21 Court will reach a conclusion that a substantially lower
22 sentence than the guideline range is justified here in the
23 interests of justice.

24 Finally, your Honor, if the Court is disposed to
25 sentencing her to incarceration, I would ask the Court to allow

1 her to self-report and to recommend that she serve any term --
2 recommend to the Bureau of Prisons that she be designated to
3 Danbury so at least her family will be able to visit with her
4 with as little inconvenience as possible.

5 I thank the Court for its time.

6 THE COURT: Thank you, Mr. Sultan.

7 Ms. Goode-James, I will hear from you if there is
8 something you would like to say at this point.

9 THE DEFENDANT: Thank you, your Honor. Your Honor, I
10 would like to again offer a profound apology. Your Honor, I
11 would like to offer a profound apology to Shelby Britto, Lionel
12 Wood and Lionel and Verona Bembridge and to express my deep
13 regret for the harm my actions have caused.

14 I realize that the financial loss my actions have
15 caused the lenders and CATIC, who were my clients, pales in
16 comparison to the damage I may have caused to the sanctity and
17 public trust that is imperative to be upheld by attorneys in
18 the practice of law. I have compromised this most important
19 professional responsibility. Regardless of my intentions, my
20 actions were illegal and unethical, and I am sorry.

21 Initially I made irresponsible choices with the intent
22 on helping a few families stop impending foreclosures on their
23 homes. Those actions turned into a web of misappropriating,
24 co-mingling and juggling of money in and out of my client
25 account in the hopes of eventually overcoming the financial

1 deficit caused when I was unable to close out the last bailouts
2 I attempted.

3 In closing, I would like to state that I am deeply
4 anguished by the dilatory and offensive effects my conduct may
5 have had on other lawyers and the practice of the law. I have
6 had the privilege of observing, knowing and at times practicing
7 with some of the most upstanding and outstanding
8 representatives of the profession. I had a responsibility to
9 uphold the ethical responsibilities of this profession, and I
10 failed.

11 I would like to thank my counsel, Attorney James
12 Sultan, for his outstanding representation and assistance with
13 my desire to swiftly accept responsibility and make known my
14 intent to plead guilty.

15 Finally, your Honor, I would like to apologize to my
16 husband, my children, my parents and my friends.

17 I am sorry for the disappointment and pain I have
18 caused you throughout this.

19 From each of them I have received unconditional love
20 and support, and I am grateful.

21 I thank you, your Honor, for the opportunity to
22 express myself, and I respectfully submit to the sentence
23 imposed, your Honor. Thank you.

24 THE COURT: Thank you. Well, as the colloquies made
25 clear, this is about as difficult a sentencing as I have ever

1 encountered because of the dissonance between all of the things
2 that Ms. Goode-James has done in her life and the bad things
3 that bring her before us.

4 I have given a great deal of thought to this. I
5 watched a portion of the DVD, the first disc, a second time
6 last night. I have looked at the letters that have been
7 submitted, and they are the most impressive collection of
8 letters that I believe I have ever received in 23 years, some
9 from persons I know by reputation and who, by reputation, I
10 view highly, but others who seem to me to be speaking directly
11 about Ms. Goode-James' qualities.

12 Of course, I start with the *Guidelines*. That is the
13 point at which I must begin my analysis, but it is not the
14 point at which I end it. I am obligated to deal with factors
15 of sentencing that are embodied in Section 3553, the first
16 being the seriousness of the offense and the need to promote
17 respect for the law.

18 The *Guidelines* are calculated, I think, in the way
19 that they are to deal with what was perceived to be a problem
20 in the sentencing of defendants in the Federal Court, that it
21 was sociologically tilted, that violent crime or blue-collar
22 crime received more severe sentences than white-collar crime;
23 and so, as a consequence, the drafters of the *Guidelines*
24 substantially upped the sentences to be imposed on white-collar
25 crime.

1 Now, why is that? Well, one is a desire to ensure a
2 lack of unwarranted disparity. Another is a kind of democratic
3 impulse that people at all stages of society should be equally
4 responsible.

5 It is an implementation of the observation that Judge
6 Friendly once made that one can steal as easily with a fountain
7 pen as he can or she can with a crowbar. There is a certain
8 bumper-sticker quality to that, I suppose, but it does not
9 begin to come to grips with the larger issues of sentencing, I
10 think.

11 So, I start with the proposition that it is the
12 considered judgment of the *Sentencing Guidelines* and it
13 reflects an important public policy as a general proposition
14 that sentencing for embezzlement offenses involving this amount
15 of money should be treated with great seriousness that
16 approximates what would happen if someone did this by burglary
17 or bank robbery without violence. But it does not begin to
18 come to grips, as I say, with the underlying circumstances of
19 those who are in a position to conduct this kind of crime.

20 Nevertheless, I stated at the outset that I think that
21 the 51 months is a sentence that properly reflects the
22 seriousness of the offense and promotes respect for the law in
23 the fashion that, as a democracy anyway, in the broadest
24 possible sense we have said is appropriate.

25 So, I turn to the question of specific deterrence or

1 general deterrence, which is a companion to this question of
2 seriousness of the offense: What does it take to keep, putting
3 it at the specific level, those who are charged with the
4 responsibility of acting as closing attorneys for lenders and
5 title insurance companies from engaging in this kind of
6 embezzlement? That is an issue that does not lend itself to
7 double-entry bookkeeping; there is no fixed figure. What I can
8 say is that I am obligated to impose a sentence no greater than
9 is necessary to keep them from doing this.

10 So, what do I say in analyzing this? I ask the
11 question would it make a difference to the title insurance
12 lawyer contemplating this kind of activity that it is 51 months
13 versus some other figure, and I cannot say that within ranges
14 that it would. The critical breakpoint is this period of
15 incarceration, I think, the loss of the right to practice law.

16 So, I look at this from the perspective of general
17 deterrence. I do not think that it is necessary to impose a
18 51-month sentence to obtain general deterrence for the targeted
19 group specifically defined and more generally defined.

20 I then turn to the question of specific deterrence.
21 The one way of looking at this and kind of the reflexive way of
22 looking at it is what do we need to do to keep Ms. Goode-James
23 from stealing from the title insurance company again? Well,
24 nothing. She has lost her ticket; she is not going to be
25 working for the title insurance company anymore.

1 But that asks a larger question, which is what kind of
2 person are we dealing with here, a person who is likely to
3 recidivate, do it again? It seems to me that element opens up
4 the issues that Mr. Sultan alluded to and that we discussed.

5 I said during the course of that colloquy the good
6 works that Ms. Goode-James has done, the commitment that she
7 has shown, seems to be in her genes, which is a broader way of
8 saying that she grew up in a family that prided the opportunity
9 to serve others in her community, and she did it, and has done
10 it and continues to do it. While there is a certain irony in
11 the role-model discussion, perhaps it is a way of recognizing
12 that people, all people, are vulnerable and capable of
13 committing crimes, and are capable of redemption, and are
14 capable even before they commit crimes of great good works.

15 In this case the great good works are much broader
16 than anything I have ever seen. I will see the corporate
17 executive who has served on boards and so on, and those are
18 good works and should be affirmed.

19 But this is a woman whose life has been involved in
20 good works, and that informs my judgment about is she going to
21 recidivate again as the specific deterrence issue. Here,
22 again, I ask myself, well, what is necessary to keep her from
23 doing it again? I can give the cheap answer, which is not
24 much, because she will not get a chance to have her hands on
25 this kind of money again.

1 But that is not the complete answer, I think. It is
2 how is someone who has been involved in this kind of thing for
3 these kinds of reasons likely to respond in the future to other
4 perhaps less-attractive or less-remunerative opportunities to
5 victimize others.

6 Here, I have to say that I think that there is very
7 little likelihood that she is going to do that again. It
8 overstates it and makes it much too sectarian to say that this
9 is an epiphany, but the short of it is that it is for her, I
10 think, coming to grips with, fully, her own responsibility for
11 her own life.

12 We can see looking through the report of the
13 psychologist or psychiatrist, I am not sure which she is, but a
14 very thoughtful report by a mental-health professional of
15 various challenges that Ms. Goode-James has faced, not for lack
16 of support through a loving family but through the various
17 kinds of distortions that our society has, both in terms of
18 willingness to accept diversity and perhaps problems of abuse
19 in relationships.

20 Those are real, and one of the things that I wanted to
21 discuss with Mr. Sultan was the differential impact that this
22 has on women in our society. It is fine and good to say men
23 and women are equal before the law, but not necessarily when
24 you sentence them. You have to understand, I think, the full
25 range, if you can -- you do the best you can -- of their

1 circumstances: what has shaped them, what has caused them to
2 be involved in various sorts of ways. Here there is some
3 explanation, not an excuse, but some explanation for what was
4 done.

5 I take very seriously -- I asked the question because
6 I do, and it is an uncomfortable question about the effect on
7 family and particularly a very young child, an infant. I
8 suspect that the impact of likely incarceration is not
9 something that was clearly in mind. The cynical way of looking
10 at the creation of family in this context is to suggest
11 otherwise. I do not in the slightest, but it is added to the
12 impact of a sentence of incarceration for the defendant, and if
13 I think about specific deterrence as being essentially impact
14 on the defendant, then I have to look at her particular
15 circumstances here, and I do.

16 So, the argument for specific deterrence, it seems to
17 me, is one for reducing the so-called guideline range.

18 I think about the penological benefit -- which is one
19 of the things -- or "penological effect" I suppose is a better
20 way of saying it, but "benefit" may be true here, too -- for
21 Ms. Goode-James. Does she need to go to prison to learn a
22 skill? No. Or to become aware of her shortcomings? I do not
23 think so. Or to get a GED or something like that? No.

24 On the other hand, there is in this role -- I think I
25 will merge into the question of disparity -- there is some

1 value that is -- and I do not want this to be understood as
2 arch or ironic -- but of a role model, someone with some of the
3 gifts that Ms. Goode-James has had. The support of family that
4 has worked hard to achieve remarkable success is punished the
5 same way everybody else is who gets involved in crime like
6 this, who takes a lot of money from other people, particularly
7 vulnerable people like the Bembridges or Mr. Wood.

8 So, I think of the role of the prison sentence as, in
9 part, exemplary and, in part, consistent within a different
10 sort of way the role model responsibilities that
11 Ms. Goode-James has taken on.

12 Now I come to the disparity. I raised the question of
13 the most recent kind of embezzlement-type crime that I
14 sentenced here, which was a fellow, who, as I said, was 63
15 years old, had been taking or receiving his father's Social
16 Security checks for the 15 years since his father has been dead
17 and it amounted to over \$200,000, and the sentence I imposed
18 was 18 months.

19 I am not sure that increasing the distance between a
20 \$200,000, 18-month sentence for an elderly man and whatever the
21 figure is for Ms. Goode-James is in service of minimizing
22 unwarranted disparities. They are two different people who
23 committed fundamentally the same wrong for a significant amount
24 of money with no apparent justification other than to augment
25 their lifestyle, including in Ms. Goode-James' circumstances a

1 suggestion that some of these monies were put to good works or
2 at least to ameliorate the misfortunes of others.

3 But I see no disparity, unwarranted disparity, in a
4 sentence that is substantially below the guideline range under
5 these circumstances, which brings me ultimately to the final
6 issue.

7 There is a value in the *Guidelines* of the kind of
8 template that the *Guidelines* provide. They guard against what
9 I started with, which is the danger that judges of a certain
10 background will be more sympathetic to white-collar defendants
11 than blue-collar defendants and, consequently, engage in an
12 unequal application of the law.

13 That is not the case here, I think. This is a serious
14 crime. People should be deterred from it. I am satisfied that
15 Ms. Goode-James will be deterred from this or any other crime
16 in the future. She has done good works and will continue to do
17 so irrespective of what sentence I impose, I am sure.

18 But my obligation is to impose a sentence that is
19 sufficient but not greater than is necessary to serve the
20 larger purposes of sentencing, and having gone through these
21 larger purposes of sentencing, I am satisfied that the proper
22 sentence to impose here is 24 months' incarceration.

23 I will not impose a fine. The defendant is not in a
24 position to pay such a fine.

25 I will impose restitution in the amount of

1 \$1,141,861.22. I must impose Special Assessments of \$400 in
2 this case. The restitution will be provided in accordance with
3 the schedule that is set forth in the Presentence Report to the
4 victims of the several transactions at issue here.

5 I will make a recommendation that the defendant
6 participate in a mental-health program, to the degree available
7 at the Bureau of Prisons facility, to address a series of
8 ongoing challenges she has faced in her life and will face in
9 the future

10 As I have said, I am going to impose a period of
11 supervised release. That will be a period of 3 years. Within
12 72 hours of release from custody, she must report in person to
13 the District in which she is released.

14 I will require that the defendant make the restitution
15 immediately, but I will suspend the interest payment
16 requirement with respect to it. It is such a daunting figure
17 that it seems just overbearing to impose interest under these
18 circumstances, and I will not.

19 But the payment, as I said, is due immediately. If it
20 is not paid immediately, it shall be made according to, first
21 in prison the inmate financial responsibility program which is
22 available there and thereafter on supervised release according
23 to a repayment schedule to be developed by the Probation Office
24 and with my approval.

25 The payments must be made to the Clerk of the United

1 States District Court and that is for transfer to the several
2 victims. The payments will be made for the benefit of the
3 borrower victims first and thereafter to the lender or title
4 insurance company.

5 Let me be clear about that. I do not mean to blame
6 the victim; on the other hand, it seems to me that the title
7 insurance companies bear some responsibility for supervision
8 and identifying who it is that they should have working for
9 them.

10 The people who are most vulnerable in this
11 circumstance are the borrowers, like the Bembridges and
12 Mr. Wood, and to the degree that there is some restitution to
13 be made, it should be made to them first.

14 The defendant is obligated to notify the United States
15 Attorney in this District within 30 days of any change in her
16 mailing or residence address that occurs while any portion of
17 the restitution remains unpaid.

18 It is further ordered that the defendant is obligated
19 not to incur any additional lines of credit or open any
20 additional lines of credit without the approval of the
21 Probation Office while any of her financial obligations remain
22 outstanding. The defendant is obligated to provide the
23 Probation Office with access to any requested financial
24 information, and that, she should understand, will be and may
25 be shared with the Financial Litigation Unit of the United

1 States Attorney's Office.

2 During the period of supervised release, again I will
3 direct the Probation Office to fashion a mental-health program
4 for the defendant, and to the degree that there is available
5 either payment by a third party or her own ability to pay,
6 having in mind that the primary responsibility is to pay
7 restitution, the defendant must pay that.

8 In addition to the standard conditions and mandatory
9 conditions of supervised release, the defendant shall not
10 commit another federal, state or local crime, shall not
11 illegally possess a controlled substance.

12 I note that I am waiving the drug-treatment
13 obligation, because it does not seem to me to be appropriate
14 under these circumstances.

15 The defendant must submit to the collection of a DNA
16 sample, as may be directed by the Probation Office, and must
17 comply, obviously, with all the standard conditions of
18 probation.

19 She is also prohibited from possessing a firearm or
20 other dangerous weapon.

21 I will make the recommendation requested by Mr. Sultan
22 that the defendant surrender after January 1, require her to
23 report not later than January 8 to the institution designated
24 by the Bureau of Prisons, and I will make a recommendation that
25 it be the federal prison camp at Danbury, which seems closest

1 to the defendant's family and will permit an opportunity for
2 them to visit with her, and while I am not in charge of making
3 classification, it seems to me that that is an appropriate
4 facility for the defendant here.

5 Is there any other recommendation or condition that
6 the parties would like me to consider in the judgment?

7 MR. BALTHAZARD: No other condition, your Honor. I
8 just wanted to ask with respect to the restitution that it be
9 pursuant to the schedule but as modified and noted in the
10 Government's sentencing memo footnote for just reference to
11 which particular lender is entitled to the restitution on that
12 one property.

13 THE COURT: All right. We will modify with respect to
14 the Beauford Street property that \$273,203.94 be made payable
15 to HSBC but the remainder of -- \$105,000 is still payable, I
16 believe, to CATIC until the settlement is effected. So, it
17 speaks as of today, and the parties and victims can compromise
18 that, to the degree that they choose to, or their successors or
19 assigns can. But that is the fixed figure.

20 Is there anything else.

21 MR. SULTAN: No, your Honor. Thank you.

22 THE COURT: You should understand, Ms. Goode-James,
23 that you do have a right of appeal. You can remain seated.
24 You will want to discuss with Mr. Sultan whether that makes any
25 sense here.

1 I think I have said everything that I can about this.
2 You understand my responsibility is to try to fashion a
3 judgment that composes all of the conflicting interests that
4 are brought into play when someone commits a crime, as you did.

5 I stand by my view that you have had an exemplary life
6 in a variety of different ways and you have served your
7 community well, except here, and that "except" is very
8 important, and that is what leads to this sentence.

9 I have no doubt that I will not encounter you again,
10 although you understand that the period of supervised release
11 for three years means that if something happens, if you get
12 involved in a jam again, that you will come back to me, and
13 then I will have to rethink whether or not I got it all wrong
14 and take whatever steps are necessary. I do not think that is
15 going to happen.

16 If there is nothing further, then we will be in
17 recess. Thank you.

18 MR. BALTHAZARD: Your Honor, I just ask that the
19 defendant be ordered to report down to the Marshals.

20 THE COURT: Yes. You should go down to the Marshals.
21 They may not be there tonight, but you will get to them by
22 tomorrow. All right?

23 MR. SULTAN: Yes, your Honor.

24 THE COURT: All right. Thank you.

25 MR. BALTHAZARD: Thank you, your Honor.

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THE CLERK: All rise.

(The Honorable Court exited the courtroom at 5:10 p.m.)

(WHEREUPON, the proceedings adjourned at 5:10 p.m.)

C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *United States v. Andrea Goode-James*, No. 1:09-cr-10170-DPW.

Date: May 7, 2012

/s/ Brenda K. Hancock

Brenda K. Hancock, RMR, CRR

Official Court Reporter